

Legislative Bill Drafting Commission  
14186-03-0

S. -----  
Senate  
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IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

**\*BANKLA\***  
(Relates to restructuring unsustain-  
able sovereign and subnational debt)

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Bank. restructure sovereign debt

AN ACT

to amend the banking law, in  
relation to restructuring unsustain-  
able sovereign and subnational debt

The People of the State of New  
York, represented in Senate and  
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal:

s15 Addabbo	s55 Funke	s26 Kavanagh	s58 O'Mara	s41 Serino
s52 Akshar	s59 Gallivan	s63 Kennedy	s62 Ortt	s29 Serrano
s46 Amedore	s05 Gaughran	s28 Krueger	s21 Parker	s51 Seward
s36 Bailey	s12 Gianaris	s24 Lanza	s19 Persaud	s39 Skoufif
s30 Benjamin	s22 Gounardes	s01 LaValle	s13 Ramos	s16 Stavisky
s34 Biaggi	s47 Griffio	s45 Little	s61 Ranzenhofner	s35 Stewart-
s57 Borrello	s40 Harckham	s11 Liu	s48 Ritchie	Cousins
s04 Boyle	s54 Helming	s03 Martinez	s33 Rivera	s49 Tedisco
s44 Breslin	s27 Hoylman	s53 May	s56 Robach	s06 Thomas
s08 Brooks	s31 Jackson	s37 Mayer	s18 Salazar	s02
s38 Carlucci	s43 Jordan	s42 Metzger	s10 Sanders	s50
s14 Comrie	s09 Kaminsky	s25 Montgomery	s23 Savino	s60
s17 Felder	s07 Kaplan	s20 Myrie	s32 Sepulveda	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a049 Abbate	a045 Cymbrowitz	a028 Hevesi	a057 Mosley	a090 Sayegh
a092 Abinanti	a018 Darling	a128 Hunter	a065 Niou	a140 Schimminger
a031 Anderson	a053 Davila	a029 Hyndman	a037 Nolan	a099 Schmitt
a084 Arroyo	a072 De La Rosa	a104 Jacobson	a144 Norris	a076 Seawright
a107 Ashby	a034 DenDekker	a097 Jaffee	a069 O'Donnell	a052 Simon
a035 Aubry	a003 DeStefano	a011 Jean-Pierre	a051 Ortiz	a036 Simotas
a120 Barclay	a070 Dickens	a135 Johns	a091 Otis	a005 Smith
a030 Barnwell	a054 Dilan	a115 Jones	a132 Palmesano	a118 Smullen
a106 Barrett	a081 Dinowitz	a077 Joyner	a002 Palumbo	a022 Solages
a060 Barron	a147 DiPietro	a040 Kim	a088 Paulin	a114 Stec
a082 Benedetto	a016 D'Urso	a131 Kolb	a141 Peoples-	a110 Steck
a042 Bichotte	a048 Eichenstein	a105 Lalor	Stokes	a010 Stern
a079 Blake	a004 Englebright	a013 Lavine	a058 Perry	a127 Stirpe
a117 Blankenbush	a074 Epstein	a134 Lawrence	a023 Pheffer	a102 Tague
a098 Brabenc	a109 Fahy	a050 Lentol	Amato	a071 Taylor
a026 Braunstein	a061 Fall	a125 Lifton	a086 Pichardo	a001 Thiele
a138 Bronson	a080 Fernandez	a009 LiPetri	a089 Pretlow	a033 Vanel
a093 Buchwald	a126 Finch	a123 Lupardo	a073 Quart	a116 Walczyk
a085 Burgos	a008 Fitzpatrick	a129 Magnarelli	a019 Ra	a055 Walker
a142 Burke	a124 Friend	a064 Malliotakis	a006 Ramos	a143 Wallace
a119 Buttenschon	a046 Frontus	a130 Manktelow	a062 Reilly	a112 Walsh
a094 Byrne	a095 Galef	a108 McDonald	a087 Reyes	a041 Weinstein
a133 Byrnes	a007 Garbarino	a014 McDonough	a043 Richardson	a024 Weprin
a103 Cahill	a148 Giglio	a146 McMahan	a078 Rivera	a059 Williams
a044 Carroll	a066 Glick	a137 Meeks	a068 Rodriguez	a113 Woerner
a136 Clark	a150 Goodell	a017 Mikulin	a027 Rosenthal, D.	a056 Wright
a047 Colton	a075 Gottfried	a101 Miller, B.	a067 Rosenthal, L.	a096 Zebrowski
a032 Cook	a021 Griffin	a038 Miller, M. G.	a025 Rozic	a012
a122 Crouch	a100 Gunther	a020 Miller, M. L.	a149 Ryan	
a039 Cruz	a139 Hawley	a015 Montesano	a121 Salka	
a063 Cusick	a083 Heastie	a145 Morinello	a111 Santabarbara	

1) Single House Bill (introduced and printed separately in either or  
both houses). Uni-Bill (introduced simultaneously in both houses and printed  
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2  
signed copies of bill and: in Assembly 2 copies of memorandum in support, in  
Senate 4 copies of memorandum in support (single house); or 4 signed copies  
of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. The banking law is amended by adding a new article 7 to  
2 read as follows:

3 ARTICLE 7

4 SOVEREIGN AND SUBNATIONAL DEBT

5 Section 300. Legislative intent.

6 301. Definitions.

7 302. Petition for relief; recognition.

8 303. Notification of creditors.

9 304. Auditing process.

10 305. Submission, contents and voting on plan.

11 306. Financing the restructuring.

12 307. Priority of repayment.

13 308. Adjudication of disputes.

14 309. Application; opt in.

15 § 300. Legislative intent. The purpose of this article is to provide  
16 effective mechanisms for restructuring unsustainable sovereign and  
17 subnational debt so as to reduce:

- 18 1. the social costs of sovereign and subnational debt crises;  
19 2. systemic risk to the financial system;  
20 3. creditor uncertainty; and  
21 4. the need for sovereign and subnational debt bailouts, which are  
22 costly and create moral hazard.

23 § 301. Definitions. For purposes of this article:

24 1. "creditor" means a person or entity that has a claim against a  
25 state;

26 2. "claim" means a payment claim against a state for monies borrowed  
27 or for the state's guarantee of, or other contingent obligation on,  
28 monies borrowed; the term "monies borrowed" shall include the following,

1 whether or not it represents the borrowing of money: monies owing under  
2 bonds; debentures; notes, or similar instruments; monies owing for the  
3 deferred purchase price of property or services, other than trade  
4 accounts payable arising in the ordinary course of business; monies  
5 owing on capitalized lease obligations; monies owing on or with respect  
6 to letters of credit, bankers' acceptances, or other extensions of cred-  
7 it; and monies owing on money market instruments or instruments used to  
8 finance trade;

9 3. "comprehensive audit" means a supervisory action taken to examine  
10 and evaluate the public debt contracting, refinancing, or negotiation  
11 process, the source and intended use of resources, and the implementa-  
12 tion of programs and projects financed with domestic or foreign debt, in  
13 order to determine the legitimacy, lawfulness, transparency, quality,  
14 efficacy, efficiency, and considering legal and financial aspects there-  
15 of;

16 4. "plan" means a debt restructuring plan contemplated by section  
17 three hundred four of this article;

18 5. "state" means a sovereign nation; or unincorporated territory; or  
19 any subnational unit thereof, excluding any municipality whose adjust-  
20 ment or debts is governed by 11 U.S.C. 9; and

21 6. "supervisory authority" means an independent body referred by the  
22 chair of the New York state senate finance committee.

23 § 302. Petition for relief; recognition. 1. A state may invoke appli-  
24 cation of this article by filing a voluntary petition for relief with  
25 the supervisory authority.

26 2. Such petition shall certify that the state:

1 (a) seeks relief under this article, and has not previously sought  
2 relief under this article, or under any other law that is substantially  
3 in the form of this article, during the past ten years;

4 (b) needs relief under this article to restructure claims that, absent  
5 such relief, would constitute unsustainable debt of the state;

6 (c) agrees to restructure those claims in accordance with this arti-  
7 cle;

8 (d) agrees to all other terms, conditions and provisions of this arti-  
9 cle; and

10 (e) has duly enacted any national or subnational law needed to effec-  
11 tuate these agreements. If requested by the supervisory authority, such  
12 petition shall also attach documents and legal opinions evidencing  
13 compliance with this paragraph.

14 3. Immediately after such a petition for relief has been filed, and so  
15 long as such filing has not been dismissed by the supervisory authority  
16 for lack of good faith, the terms, conditions, and provisions of this  
17 article shall:

18 (a) apply to the debtor-creditor relationship between the state and  
19 its creditors to the extent such relationship is governed by the law of  
20 this jurisdiction;

21 (b) apply to the debtor-creditor relationship between the state and  
22 its creditors to the extent such relationship is governed by the law of  
23 another jurisdiction that has enacted law substantially in the form of  
24 this article; and

25 (c) be recognized in, and by, all other jurisdictions that have  
26 enacted law substantially in the form of this article.

1 § 303. Notification of creditors. 1. Within thirty days after filing  
2 its petition for relief, the state shall notify all of its known credi-  
3 tors of its intention to negotiate a plan under this article.

4 2. The supervisory authority shall prepare and maintain a current list  
5 of creditors of the state and verify claims for the purposes of super-  
6 vising voting under this article.

7 § 304. Auditing process. 1. Before the execution of a plan, a compre-  
8 hensive audit shall be conducted.

9 2. The supervisory authority shall choose an independent body to  
10 conduct such comprehensive audit.

11 3. The costs associated with a comprehensive audit shall be borne by  
12 the state.

13 4. The audit process shall abide by the general principles related to  
14 the International Standards of Supreme Audit Institutions 100 issued by  
15 the International Organization of Supreme Audit Institutions.

16 § 305. Submission, contents and voting on plan. 1. The state may  
17 submit a plan to its creditors at any time, and may submit alternative  
18 plans from time to time.

19 2. No other person or entity may submit a plan on behalf of the state.

20 3. A plan shall:

21 (a) designate classes of claims in accordance with subdivision six of  
22 this section;

23 (b) specify the proposed treatment of each class of claims;

24 (c) provide the same treatment for each claim of a particular class,  
25 unless the holder of a claim agrees to a less favorable treatment;

26 (d) disclose any claims not included in the plan's classes of claims;

27 (e) provide adequate means for the plan's implementation including,  
28 with respect to any claims, curing or waiving any defaults or changing

1 the maturity dates, principal amount, interest rate, or other terms or  
2 canceling or modifying any liens or encumbrances; and

3 (f) certify that, if the plan becomes effective and binding on the  
4 state and its creditors under subdivision four of this section, the  
5 state's debt will become sustainable.

6 4. A plan shall become effective and binding on the state and its  
7 creditors when it has been submitted by the state and agreed to by each  
8 class of such creditors' claims designated in the plan under subdivision  
9 three of this section. Thereupon, the state shall be discharged from all  
10 claims included in those classes of claims, except as provided in the  
11 plan.

12 5. A class of claims has agreed to a plan if creditors holding at  
13 least two-thirds in amount and more than one-half in number of the  
14 claims of such class voting on such plan agree to the plan.

15 6. Each class of claims shall consist of claims against the state that  
16 are equal in priority, provided that:

17 (a) equal claims need not all be included in the same class;

18 (b) claims of governmental or multi-governmental entities each shall  
19 be classed separately; and

20 (c) claims that are governed by this article or the law of another  
21 jurisdiction that is substantially in the form of this article shall not  
22 be classed with other claims.

23 § 306. Financing the restructuring. 1. Subject to subdivision three of  
24 this section the state shall have the right to borrow money on such  
25 terms and conditions as it deems appropriate.

26 2. The state shall notify all of its known creditors of its intention  
27 to borrow under subdivision one of this section, the terms and condi-  
28 tions of the borrowing, and the proposed use of the loan proceeds. Such

1 notice shall also direct those creditors to respond to the supervisory  
2 authority within thirty days as to whether they approve or disapprove of  
3 such loan.

4 3. Any such loan shall be approved by creditors holding at least two-  
5 thirds in amount of the claims of creditors responding to the superviso-  
6 ry authority within that thirty-day period.

7 4. In order for the priority of repayment, and corresponding subordi-  
8 nation, under section three hundred seven of this article to be effec-  
9 tive, any such loan shall additionally be approved by creditors holding  
10 at least two-thirds in principal amount of the covered claims of the  
11 creditors responding to the supervisory authority within that thirty-day  
12 period. Claims shall be deemed to be covered if they are governed by  
13 this article or by the law of another jurisdiction that is substantially  
14 in the form of this article.

15 § 307. Priority of repayment. 1. The state shall repay loans approved  
16 under this article prior to paying any other claims.

17 2. The claims of creditors of the state are subordinated to the extent  
18 needed to effectuate the priority payment under this section. Such  
19 claims are not subordinated for any other purpose.

20 3. The priority of payment, and corresponding subordination, under  
21 this section is expressly subject to the approval by creditors under  
22 subdivision four of section three hundred six of this article.

23 § 308. Adjudication of disputes. 1. All disputes arising under this  
24 article shall be resolved by binding arbitration before a panel of three  
25 arbitrators.

26 2. The arbitration shall be governed by the rules of the International  
27 Centre for Settlement of Investment Disputes (ICSID).

1 3. Notwithstanding the provisions of subdivision two of this section,  
2 if all the parties to an arbitration contractually agree that such arbi-  
3 tration shall be governed by other rules, it shall be so governed. Such  
4 agreement may be made before or after the dispute arises.

5 4. The state shall pay all costs, fees, and expenses of the arbi-  
6 trations.

7 § 309. Application; opt in. 1. This article applies where, by contract  
8 or otherwise,

9 (a) the law of New York state governs the debtor-creditor relationship  
10 between a state and its creditors; and

11 (b) the application of this article is invoked in accordance with  
12 section three hundred two of this article.

13 2. Where this article applies, it shall operate retroactively and,  
14 without limiting the foregoing, shall override any contractual  
15 provisions that are inconsistent with the provisions of this article.

16 3. Any creditors of the state whose claims are not otherwise governed  
17 by this article may contractually opt in to this article's terms, condi-  
18 tions, and provisions.

19 4. The terms, conditions, and provisions of this article shall apply  
20 to the debtor-creditor relationship between the state and creditors  
21 opting in under subdivision one of this section as if such relationship  
22 were governed by the laws of New York state under subdivision three of  
23 section three hundred two of this article.

24 § 2. This act shall take effect on the one hundred eightieth day after  
25 it shall have become a law.